

Transmittal Form; Response & Amendment (14 Pages)



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Paper: Response & Amendment

Applicant: Ransom

Serial No.: 10/687,341

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EXHIBIT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ransom

Serial No.: 10/687,341

Group No.: 3781

Filed: October 17, 2003

Examiner: Harry A. Grosso

For: **COLLAPSIBLE LUGGAGE AREA PROTECTOR**

RESPONSE & AMENDMENT

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action of March 13, 2007, please amend the above-captioned application as indicated on the following pages.

Amendments to the Claims:

This listing of claims replaces all prior versions and listings of claims in the application:

Listing of Claims:

Please amend the claims as indicated in the following listing of claims:

1. (Currently Amended) A protective liner for a vehicle storage area of predetermined shape and size comprising:

 a flexible and substantially impermeable floor having a perimeter and substantially forming a plane;

 a flexible and substantially impermeable sleeve surrounding and affixed to said perimeter of said floor;

 a flexible and substantially impermeable wall affixed to said sleeve and having a free end opposite said sleeve, wherein the wall is normal to the plane formed by the floor; and

 a flexible and coilable resilient frame captured within said sleeve.

2. (Previously Presented) The invention of claim 1, having a perimeter shape and size, wherein said perimeter shape and size are substantially the same as said shape and said size of said vehicle storage area.

3-6. (Canceled)

7. (Currently Amended) A protective liner for a vehicle storage area of predetermined shape and size comprising:

 a flexible and substantially impermeable floor having a perimeter;

a flexible and substantially impermeable sleeve surrounding and affixed to said perimeter of said floor;

a flexible, upright, and substantially impermeable wall affixed to said sleeve and having a free end opposite said sleeve;

a flexible and coilable resilient frame captured within said sleeve; and

said liner further comprising a fastener means, whereby said liner is removably secured to said vehicle storage area.

8-9. (Canceled)

10. (Currently Amended) The invention of claim 1, further comprising:

the liner having a collapsed orientation and an uncollapsed orientation, wherein said wall is sufficiently resilient to allow said wall to be folded into said collapsed orientation and of sufficient stiffness to permit said wall to remain substantially upright in said uncollapsed orientation. ~~and a container for protecting and transporting the liner in the collapsed orientation.~~

11-12. (Canceled)

13. (Previously Presented) The invention of claim 7, having a perimeter shape and size, wherein said perimeter shape and size are substantially the same as said shape and said size of said vehicle storage area.

14. (Currently Amended) The invention of claim 7, further comprising:

the liner having a collapsed orientation and an uncollapsed orientation, wherein said wall is sufficiently resilient to allow said wall to be folded into said collapsed orientation and of sufficient stiffness to permit said wall to remain substantially upright in said uncollapsed

orientation. and a container for protecting and transporting the liner in the collapsed orientation.

15-20. (Canceled)

21. (Currently Amended) A protective liner for a supporting surface of a vehicle storage area, comprising:

a substantially planar floor supported by the supporting surface and in substantially continuous contact therewith, wherein said substantially planar floor is flexible and substantially impermeable;

a sleeve extending substantially upright with respect to said substantially planar floor and said sleeve surrounding ~~[[an]]~~ and affixed to said perimeter of said substantially planar floor, wherein said ~~substantially planar floor~~ sleeve is flexible and substantially impermeable;

a wall having a bottom edge affixed to said sleeve and a ~~three~~ free top edge opposite said bottom edge, and said wall extending substantially normal to said substantially planar floor, wherein said wall is flexible and substantially impermeable; and

a flexible and coilable resilient frame captured within said sleeve for applying tension to said sleeve and said floor wherein said sleeve is affixed to said perimeter of said substantially planar floor adjacent to a bottom edge of said frame and said sleeve is affixed to said bottom edge of said wall adjacent to a top edge of said frame.

22. (Previously Presented) The invention of claim 21, wherein said substantially planar floor defines an upwardly-facing surface that is exposed to the vehicle storage area.

23. (Currently Amended) The invention of claim 21, wherein the liner has a collapsed orientation and an un-collapsed orientation, wherein said wall is sufficiently resilient to allow said wall to be folded into said collapsed orientation and of sufficient stiffness to permit said wall to

remain substantially upright in said uncollapsed orientation. ~~and a container for protecting and transporting the liner in the collapsed orientation.~~

24. (New) The invention of claim 1, wherein said wall and said frame are aligned vertically.

25. (New) The invention of claim 1, wherein said wall and said frame are substantially coplanar.

26. (New) The invention of claim 1, wherein said free end of said wall substantially overlies said frame.

27. (New) The invention of claim 7, wherein said wall and said frame are aligned vertically.

28. (New) The invention of claim 7, wherein said wall and said frame are substantially coplanar.

29. (New) The invention of claim 7, wherein said free end of said wall substantially overlies said frame.

30. (New) The invention of claim 21, wherein said wall and said frame are aligned vertically.

31. (New) The invention of claim 21, wherein said wall and said frame are substantially coplanar.

32. (New) The invention of claim 21, wherein said free top edge of said wall substantially overlies said frame.

REMARKS / ARGUMENTS

Applicant thanks the Examiner for the Office Action mailed on March 13, 2007. After entry of this Amendment, claims 1, 2, 7, 10, 13-14, and 21-32 are pending. Claims 3-6, 8-9, 11-12, and 15-20 were previously canceled. Applicant respectfully requests reconsideration of the previously-presented claims and the newly-presented claims in light of the following remarks.

I. OBJECTIONS

The Examiner first objected to claim 21 because the phrase “wherein said substantially planar floor is flexible and substantially impermeable” was repeated. In response, the Applicant has amended the second recitation of the phrase to read “wherein said sleeve is flexible and substantially impermeable.” The Examiner next objected to claim 21 because of the phrase “an affixed.” In response, this phrase has been replaced with “and affixed” as suggested by the Examiner.

Applicant believes that the amendments described above have remedied the informalities cited by the Examiner. Accordingly, Applicant requests that the objections be withdrawn.

II. REJECTIONS UNDER 35 U.S.C. §112

The Examiner rejected claim 21 under 35 USC § 112 because it was unclear what was intended by the phrase “a three top edge.” The recitation of the word “three” was due to a typographical error, and claim 21 has been amended to state “a free top edge.” In light of this amendment, Applicant believes that claim 21 is no longer indefinite, and respectfully requests that the rejection under 35 USC § 112 be withdrawn.

III. REJECTIONS UNDER 35 U.S.C. §102

Next, the Examiner rejected claims 1, 10, and 21-23 under 35 U.S.C. §102(a or e) as being anticipated by Wang, United States Patent Application Publication No. 2003/0183629. With regard to claim 1, the Examiner asserted that Wang discloses a liner capable of being used in a vehicle storage area with a flexible, impermeable floor 18 and wall 16, a sleeve surrounding and affixed to

the floor 14, and a resilient frame 12. The Examiner further asserted that the wall is normal to the floor, as shown in FIG. 3 of Wang. With regard to claim 10, the Examiner also asserted that Wang discloses that the liner has a collapsed and uncollapsed orientation and a container. With regard to claim 1, the Examiner asserted that Wang discloses a liner capable of being used in a vehicle storage area with an impermeable floor 18 and a wall 16, where the floor and the wall are described as separate pieces of material in FIGS. 1 and 2 of Wang, a substantially upright sleeve surrounding and affixed to the floor 14, and a resilient frame 12. The Examiner further asserted that the wall is substantially normal to the floor in the Wang reference. With regard to claim 22, the Examiner asserted that the planar floor would define an upwardly-facing surface exposed to the storage area when the walls and the floor are separate pieces of material. Finally, with regard to claim 23, the Examiner asserted that the liner has a collapsed and uncollapsed orientation.

As an initial matter, and with respect to all of the rejections based on the Wang reference, Applicant believes that the Wang reference is not operative in the manner asserted by the Examiner. Specifically, although Figure 3 shows a fluid filled bowl wherein the walls are supported in an upright configuration, there is no teaching in the Wang reference that explains how the upper steel ring 12 is held spaced above the lower steel ring 14. Rather, the structure shown in Figure 3 of Wang appears to be in defying gravity, as the only possible support shown for the steel ring 12 is a fabric wall 16. It seems untenable that the fabric wall 16 is both supporting itself in an upright position while at the same time supporting the weight of the steel ring 12 and the liquid 22. Accordingly, when supported by the floor 18, it does not seem reasonable to infer that the structure shown in Figure 3 of Wang would be upright.

Turning to claim 1, Applicant has amended claim 1 to specify that the protective liner stated in claim 1 has a flexible and substantially impermeable wall affixed to the sleeve and having a free end opposite said sleeve. This structure is distinguishable from the Wang reference in that Wang does not show a wall that is affixed to a sleeve and has a free end opposite the sleeve. Rather, in

Wang, the wall 16 extends between two separate sleeves 12, 14, each having a separate frame element disposed therein. In contrast, Applicant's specification teaches that by attaching a wall having a free edge to the upper edge of a sleeve, the wall remains substantially upright when the cargo liner is in its unfolded configuration. Accordingly, Applicant believes that claim 1, as amended, is not anticipated by Wang, and Applicant respectfully requests that the rejection of claim 1 over Wang be withdrawn.

Turning next to claim 10, Applicant has amended claim 10 to specify that the wall is sufficiently resilient to allow the wall to be folded to the collapsed orientation while at the same time, the wall is of sufficient stiffness to permit the wall to remain substantially upright when in the uncollapsed orientation. Based both upon the present amendment to claim 10, as well as its dependency from claim 1, Applicant believes that claim 10 distinguishes over Wang, and Applicant respectfully requests that the rejection of claim 10 over Wang be withdrawn.

Turning next to claim 21, Applicant has amended that claim to specify that the wall has a free top edge and to specify that a top edge of the frame is adjacent to the point at which the sleeve is affixed to the wall, and a bottom edge of the frame is adjacent to the point at which the sleeve is affixed to the floor. These limitations distinguish over Wang, which does not show a wall having a free top edge, as explained with respect to claim 1. Further, Wang does not show the sleeve and frame configuration now stated by claim 21. Rather, Wang shows a sleeve with a frame element therein wherein the ends of the sleeve are abutting one another. In this manner, Wang applies tension to the wall in a direction that is substantially perpendicular to a wall. In contrast, by affixing the wall and floor to the sleeve at opposite edges of the frame, the invention stated in claim 21 allows the wall to extend upward from the sleeve and eliminates the need for two separate frame elements at the top and bottom of the wall as in the Wang reference. Accordingly, Applicant respectfully requests that the rejection of claim 21 over Wang be withdrawn in light of the present amendment. Turning next to claim 22, Applicant respectfully disagrees with the Examiner's assertion that the planar floor of

Wang defines an upwardly facing surface exposed to the storage area, in light of the clear teaching of FIG. 3 of Wang that a two-ply structure, including interior wall 20, is needed to retain fluids within the bowl shown in the Wang reference. Applicant respectfully submits that claim 22 is distinguishable from Wang on this basis, or alternatively, that claim 22 is now allowable on the basis of its dependency from presently-amended claim 21. Accordingly, Applicant respectfully requests that the rejection of claim 22 over Wang be withdrawn.

Turning next to claim 23, Applicant has amended that claim to specify that the wall is sufficiently flexible to be folded into the collapsed orientation while of sufficient thickness to be substantially upright in the uncollapsed orientation. Applicant believes that claim 23 distinguishes over Wang either on the basis of this amendment or on the basis of its dependency from presently-amended claim 21. Accordingly, Applicant respectfully requests that the rejection of claim 23 over Wang be withdrawn.

IV. REJECTIONS UNDER 35 U.S.C. §103

The Examiner next rejected claims 7 and 14 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of Behlman. The Examiner asserted that Wang discloses the invention as discussed with respect to the Examiner's rejection of claim 1 but does not disclose the fastener means stated in claim 7. The Examiner went on to assert that Behlman discloses a protective liner for use in the cargo area of a vehicle and further discloses that the liner is secured in the cargo area by the use of a hook-and-loop type gripper. The Examiner then concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a hook-and-loop type gripper as disclosed by Behlman with the protective liner disclosed by Wang to allow securing of the liner in position in the cargo area.

With regard to claim 14, the Examiner asserted that Wang discloses the liner has a collapsed and uncollapsed orientation and a container.

Applicant has amended claim 7 to state that the wall has a free end opposite the sleeve. As discussed with regard to the Examiner's rejection of claim 1, this structure is not shown in the Wang reference. On this basis, Applicant believes that the combination of Wang and Behlman does not render the invention stated in currently-amended claim 7 obvious.

With regard to claim 14, Applicant has amended that claim as previously discussed with regard to claim 10. For this reason, and in light of the amendment to claim 7, from which claim 14 depends, Applicant respectfully requests that the rejection of claim 14 over Wang in view of Behlman be withdrawn.

Aside from the distinctions made by the present amendment, which Applicant believes overcome the rejections of claims 7 and 14, Applicant further believes that the combination of the Wang reference with the Behlman reference is improper for the reasons that Wang is non-analogous art and that the Examiner has shown no suggestion to combine these references.

Turning first to the question of whether Wang is non-analogous art, the Applicant directs the Examiner to the case In re Clay, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992). In that case, the Federal Circuit stated that a prior art reference can be found analogous in one of two ways. First, it is analogous if it is from the same field of endeavor as the Applicant's invention. Alternatively, if it is not within the Applicant's field of endeavor, the reference may be found analogous if the reference is reasonably pertinent to the particular problem with which the inventor is involved. *Id.*, 23 USPQ2d at 1060. *See also In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). In the case of the Wang reference, the Applicant contends that it is not from the Applicant's field of endeavor, which may be characterized from the preamble of the claims, namely, protective liners for vehicle storage areas. Wang, on the other hand, is from the field of collapsible containers that can be carrier on one's person for temporary use during outdoor activities (para. 0003). Turning then to the second prong in the analysis, the Federal Circuit stated the following:

A reference is reasonably pertinent if even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem . . . If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports use of that reference in an obviousness rejection . . . If it is directed to a different purpose, the inventor would, accordingly, have had less motivation or occasion to consider it.

Clay, 23 USPQ2d at 1061. The purpose of the Applicant's instant invention is evident from the Applicant's disclosure in the section of the specification entitled "Summary of the Invention."

There, the Applicant notes repeatedly that the object of the present invention is to provide a new and improved cargo liner for motor vehicles. In contrast, it is apparent from the Wang reference that it is directed to providing a "collapsible container useful in various activities, such as sports, camping, hiking, dog-walking, etc." (Col. 1, line 1 - Col. 4, line 30). Respectfully, the Examiner's assertion that "Wang discloses a liner capable of being used in a vehicle storage area" is not relevant to the analysis. The question is whether Wang is directed to the purpose of the instant invention, and it is evident from the Wang disclosure that it is not. For this reason, the Applicant believes that Wang is non-analogous art, and therefore is not properly combined with Behlman in rejecting claims 7 and 14 under 35 U.S.C. § 103. The Applicant therefore respectfully requests that the Examiner withdraw the rejection of claims 7 and 14 on this basis.

The second basis on which the Applicant believes that the Wang-Behlman combination is improper is the lack of suggestion to combine these references. As the Federal Circuit stated in Oetiker, "there must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge cannot come from the Applicant's invention itself." In re Oetiker, 24 USPQ2d at 1446. The Federal Circuit has expanded on this elsewhere. Specifically, the suggestion to combine the references need not be present in the specific references themselves but may be part of the "knowledge generally available to one of ordinary skill in the art." In re Fine, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed.

Cir. 1998). “Obviousness is tested by what the combined teachings of the references would have suggested to those of ordinary skill in the art . . . But it cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination . . . And teachings of references can be combined *only* if there is some suggestion or incentive to do so.” *Id.* at 1599 (internal quotes and citations omitted).

In the rejection of claims 7 and 14, the Examiner asserted that the combination of Wang with Behlman would be obvious to one of ordinary skill in the art “to allow securing of the liner in position in the cargo area.” This is merely a conclusory statement. It does not objectively identify where the suggestion to combine these references comes from. The Applicant submits that there is no suggestion found within either Wang or Behlman to combine them as the Examiner suggests. On the contrary, Wang teaches away from this combination in that the container of Wang is intended to be transported on one’s person for temporary use in outdoor environments. Further, the Examiner has provided no evidence that the suggestion to combine Wang with Behlman was in the knowledge generally available to one of ordinary skill in the art at the time the instant invention was made. Lacking this suggestion, the Applicant respectfully submits that the Examiner’s rejection on this basis is improper. Consequently, the Applicant respectfully requests that the Examiner withdraw this rejection against claims 7 and 14.

The Examiner next rejected claim 2 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of Cesare. The Examiner asserted that Wang discloses the invention except for the liner substantially the same shape and size as the shape and size of the vehicle storage area and that this limitation is taught by Cesare. The Examiner then concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a protective liner in the shape of a vehicle storage area as disclosed by Cesare with the protective liner disclosed by Wang to allow the use of the entire storage area for storing goods.

The Applicant first notes that claim 2 depends from claim 1, and thus, Applicant believes that the rejection of claim 2 has been overcome by the present amendments to claim 1, as explained with regard to the rejection of claim 1 over Wang.

Further, Applicant believes that the combination of Wang and Cesare is improper. First, Wang is non-analogous art, as explained with regard to the rejection of claims 7 and 14. Next, there is no suggestion to combine Wang and Cesare. The Examiner's statement that it would have been obvious to combine these references to "allow use of the entire storage area for storing goods" is merely a conclusory statement that does not objectively identify where the suggestion to combine these references comes from. The Applicant submits that there is no suggestion found within either Wang or Cesare to combine them as the Examiner suggests. On the contrary, Wang teaches away from this combination in that the container of Wang is intended to be transported on one's person, and this purpose would be defeated by providing a container the size of a vehicle storage area, which would not be easily transportable on one's person. Further, the Examiner has provided no evidence that the suggestion to combine Wang and Cesare was in the knowledge generally available to one of ordinary skill in the art at the time the invention was made. Lacking the suggestion, the Applicant respectfully submits that the Examiner's rejection on this basis is improper. Consequently, the Applicant respectfully requests that the Examiner withdraw this rejection against claim 2.

The Examiner next rejected claim 13 under 35 U.S.C. §103(a) as being unpatentable over Wang as modified by Behlman in view of Cesare. The Examiner asserted that Wang as modified by Behlman discloses the invention except for the liner substantially the same as the shape and size of the vehicle storage area. The Examiner further asserted that Cesare discloses a protective liner in the shape and size of a vehicle storage area. The Examiner then concluded that it would have been obvious to have incorporated the use of a protective liner in the shape of a vehicle storage area as disclosed by Cesare with the protective liner disclosed by Wang as modified by Behlman to allow use of the entire storage area for storing goods.

Applicant first notes that claim 13 depends from currently-amended claim 7, and respectfully requests that the rejection of claim 13 be withdrawn for the reasons stated with regard to claim 7.

Applicant next respectfully submits that the combination of Wang with Behlman and Cesare as applied to claim 13 is improper. Applicant's basis for this conclusion is substantially the same as stated with respect to claims 2, 7, and 14. Particularly, Wang is non-analogous art, as explained with regard to the rejection of claims 7 and 14. Furthermore, there is no suggestion to combine Wang with Behlman, as explained with regard to the rejection of claim 7 and 14, or with Cesare, as explained with regard to the rejection of claim 2. Consequently, the Applicant respectfully requests that the Examiner withdraw this rejection against claim 13.

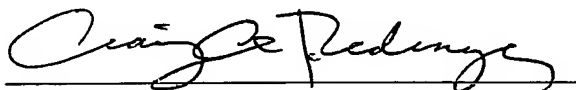
V. NEW CLAIMS

The Applicant has added new claims 24-32 to better claim the invention. The limitations stated in these claims are shown and fully supported by both Figures 1 and 2 of the instant application, and are best understood with reference to the cross-section view shown in Figure 2. Accordingly, no new matter is added in these claims. The Applicant respectfully submits that none of the references of record teach or suggest the invention as set forth in new claims 24-32.

VI. CONCLUSION

The Applicant thanks the Examiner for his consideration of the above remarks and the new claims. If the Examiner should have any questions regarding this paper, he may contact Applicant's undersigned counsel at (734) 662-0270.

Respectfully submitted,



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DATED: April 18, 2007